



Billing Code 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042-8884-02]

RTID 0648-XA598

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; quota transfer and fishery reopening.

SUMMARY: NMFS transfers 68.7 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the October through November 2020 General category subquota period and reopens the General category fishery for two days. This action is intended to provide a reasonable opportunity to harvest the full annual U.S. bluefin tuna quota without exceeding it, while maintaining an equitable distribution of fishing opportunities across time periods. This action applies to Atlantic tunas General category (commercial) permitted vessels and Atlantic Highly Migratory Species (HMS) Charter/Headboat category permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

DATES: The quota transfer is effective [*insert date of filing for public inspection with the Office of the Federal Register*], through November 30, 2020. The reopening is effective 12:30 a.m., local time, October 28, 2020, through 11:30 p.m., local time, October 29, 2020.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Nicholas Velseboer, 978-281-9260, or Larry Redd, 301-427-8503.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and amendments. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The current baseline General and Reserve category quotas are 555.7 mt and 29.5 mt, respectively. See § 635.27(a). Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a “subquota” or portion of the annual General category quota. The baseline subquotas for each time period are as follows: 29.5 mt for January; 277.9 mt for June through August; 147.3 mt for September; 72.2 mt for October through November; and 28.9 mt for December. Any unused General category quota rolls forward from one time period to the next, and is available for use in subsequent time periods. To date, NMFS has taken several actions that resulted in adjustments to the General and Reserve category

quotas, resulting in currently adjusted quotas of 88.7 mt of quota for the Reserve category, 100 mt for the General category January through March 2020 subquota period, and 9.4 mt for the December 2020 subquota period (85 FR 17, January 2, 2020; 85 FR 6828, February 6, 2020; 85 FR 43148, July 16, 2020; 85 FR 59445, September 22, 2020; and 85 FR 61872, October 1, 2020). Most recently, NMFS transferred 40 mt to the General category and closed the General category fishery effective October 9, 2020, based on projections that landings would meet or exceed the adjusted October through November subquota of 112.2 mt by that date (85 FR 64411, October 13, 2020). In that action, NMFS indicated it planned to account for General category overharvest from the September 2020 subquota period, as well as additional landings from the June through August period not previously accounted for in 85 FR 59445 (September 22, 2020), in a subsequent notice. Preliminary landings data as of October 21, 2020, indicate that the amount of overharvest (through September 30, 2020) that needs to be accounted for is 53.2 mt.

Transfer of 68.7 mt from the Reserve Category to the General Category

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories, after considering regulatory determination criteria provided under § 635.27(a)(8). NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota transfer. These considerations include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category

fishermen and provided by bluefin tuna dealers continue to provide valuable data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT in the General category would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date (including during the fall and winter fisheries in the last several years), and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). Preliminary landings data as of October 26, 2020, indicate that the General category landed 88.5 mt for the October through November period. This represents 79 percent of the adjusted October through November subquota (112.2 mt), and means that 23.7 mt remains available (112.2 mt – 88.5 mt). Transferring 68.7 mt of quota from the Reserve category accounts for 53.2 mt of accrued overharvest from the prior time periods and results in an additional 15.5 mt being available for the October through November 2020 subquota period, thus effectively providing limited additional opportunities to harvest the U.S. bluefin tuna quota while avoiding exceeding it.

Regarding the projected ability of the vessels fishing under the particular category quota (here, the General category) to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(8)(iii)), a portion of the transferred quota covers the 53.2-mt overharvest of the General category subquotas through September 30, 2020. NMFS anticipates that General category participants will be able to harvest the 39.2 mt of BFT quota that remains available for the October through November subquota (23.7 mt remaining + 15.5 mt from the transfer), following this action, by the end of the subquota time period, but this is also subject to weather

conditions and BFT availability. In the unlikely event that any of this quota is unused by November 30, such quota will roll forward to the next subperiod within the calendar year (*i.e.*, the December period), and NMFS anticipates that it would be used before the end of the fishing year. Thus, this quota transfer would allow fishermen to take advantage of the availability of fish on the fishing grounds, and provide a reasonable opportunity to harvest the full U.S. BFT quota.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2020 landings and dead discards. In the last several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS will need to account for 2020 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that. NMFS anticipates that General category participants in all areas and time periods will have opportunities to harvest the General category quota in 2020, through active inseason management such as the timing of quota transfers, as practicable. Thus, this quota transfer would allow fishermen to take advantage of the availability of fish on the fishing grounds to the extent consistent with the available amount of transferrable quota and other management objectives, while avoiding quota exceedance.

NMFS also considered the effects of the adjustment on the BFT stock and the effects of the transfer on accomplishing the objectives of the FMP (§ 635.27(a)(8)(v) and (vi)). This transfer would be consistent with the current quotas, which were established and analyzed in the 2018 BFT quota final rule (83 FR 51391, October 11, 2018), and

with objectives of the 2006 Consolidated HMS FMP and amendments and is not expected to negatively impact stock health or to affect the stock in ways not already analyzed in those documents. Another principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and amendments, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations (related to § 635.27(a)(8)(x)). Specific to the General category, this includes providing opportunity equitably across all time periods.

Based on the considerations above, NMFS is transferring 68.7 mt of the available 88.7 mt of Reserve category quota to the General category. Of this amount, 53.2 mt accounts for preliminary overharvest of the January through March, June through August, and September time period subquotas, and 15.5 mt is added to the October through November subquota. Therefore, NMFS adjusts the General category October through November subquota 2020 subquota to a total of 127.7 mt after accounting for the 53.2 mt of overharvest through for the prior 2020 time periods, and adjusts the Reserve category quota to 20 mt.

General Category Reopening

Based on early October landings rates, NMFS has determined that reopening the General category fishery for two days is appropriate given the amount of quota that remains available for October through November, following this action (*i.e.*, 39.2 mt).

Therefore, the General category fishery will reopen at 12:30 a.m., October 28, 2020, and close at 11:30 p.m., October 29, 2020. The General category daily retention

limit during this reopening remains the same as prior to closing: one large medium or giant (*i.e.*, measuring 73 inches (185 cm) curved fork length or greater) bluefin tuna per vessel per day/trip. This action applies to Atlantic tunas General category (commercial) permitted vessels and HMS Charter/Headboat category permitted vessels with a commercial sale endorsement when fishing commercially for BFT. Retaining, possessing, or landing large medium or giant BFT by persons aboard vessels permitted in the General and HMS Charter/Headboat categories must cease at 11:30 p.m. local time on October 29, 2020.

The General category will automatically reopen December 1, 2020, for the December 2020 subquota time period at the default one-fish level. In January 2020, NMFS adjusted the General category base subquota for the December 2020 period to 9.4 mt (85 FR 17, January 2, 2020). Based on quota availability in the Reserve, NMFS may consider transferring additional quota to the December subquota period, as appropriate.

Fishermen may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. All BFT that are released must be handled in a manner that will maximize their survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the “Careful Catch and Release” brochure available at <https://www.fisheries.noaa.gov/resource/outreach-and-education/careful-catch-and-release-brochure/>.

Monitoring and Reporting

NMFS will continue to monitor the BFT fisheries closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by

dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustment, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov*, using the HMS Catch Reporting app, or calling (888) 872-8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available subquotas are not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281-9260, or access *hmspermits.noaa.gov*, for updates on quota monitoring and inseason adjustments.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 635, which was issued pursuant to section 304(c), and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS finds that pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice of, and an opportunity for public comment on, for the following reasons: The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the

unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement the quota transfer is impracticable and contrary to the public interest. The General category recently closed, but based on available BFT quotas, fishery performance in recent weeks, and the availability of BFT on the fishing grounds, responsive reopening of the fishery is warranted to allow fishermen to take advantage of availability of fish and of quota. NMFS could not have proposed this action earlier, as it needed to consider and respond to updated data and information about fishery conditions and this year's landings. If NMFS was to offer a public comment period now, after having appropriately considered that data, it would preclude fishermen from harvesting BFT that are legally available. This action does not raise conservation and management concerns. Transferring quota from the Reserve category to the General category does not affect the overall U.S. BFT quota, and available data shows the adjustment would have a minimal risk of exceeding the ICCAT-allocated quota. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment criteria. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: October 27, 2020.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

[FR Doc. 2020-24107 Filed: 10/27/2020 4:15 pm; Publication Date: 10/30/2020]